

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-KC-657
	)	
Wichita SMSA Tower Holdings, LLC	)	NAL/Acct. No. 200232560032
Owner of Antenna Structure Number 1032091 in	)	
Wichita, KS	)	FRN 0001658657
Dallas, Texas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: September 25 , 2002**

By the Enforcement Bureau, Kansas City Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Wichita SMSA Tower Holdings, LLC (“Wichita”), owner of antenna structure number 1032091 in Wichita, Kansas, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51(b) of the Commission's Rules (“Rules”).<sup>1</sup> Specifically, we find Wichita SMSA Tower Holdings, LLC apparently liable for its failure to continuously exhibit all medium intensity obstruction lighting.

**II. BACKGROUND**

2. On August 14, 2002, an agent from the FCC Enforcement Bureau, Kansas City Field Office observed that antenna structure number 1032091 was not illuminated per its assigned lighting specifications in that the top strobe light was not operational on the antenna structure. According to the Federal Aviation Administration (“FAA”), they had not received a report of the light outage and no Notice to Airmen (“NOTAM”) had been issued.

3. On August 22, 2002, Ms. Kellye Abernathy, a representative of Wichita, stated that in early 1995, Wichita received approval from the FAA to change from painting and lighting to dual lighting and, at that time, a strobe light was added to the tower but the light was never wired into the structure’s monitoring system. Once the light was wired into the system, which occurred after the FCC agent contacted Ms. Abernathy, the monitoring alarm went off indicating that the light was burned out. She

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<sup>1</sup> 47 C.F.R. § 17.51(b).

further indicated that the problem was a misunderstanding by the technician at the tower who was unaware that there should be a daytime strobe.

### III. DISCUSSION

4. Section 17.51(b) requires that all high intensity and medium intensity obstruction lighting be exhibited continuously unless otherwise specified. The antenna structure owner is responsible for maintaining the structure's lighting.<sup>2</sup> In addition, the antenna structure owner shall report immediately to the FAA any known improper functioning of a structure's top light or any flashing light.<sup>3</sup> On August 14, 2002, Wichita failed to exhibit medium intensity obstruction lighting on its antenna structure number 1032091, in accordance with its antenna structure registration and FAA requirements. Additionally, Wichita had not filed a report of a light outage on this structure with the FAA.

5. Based on the evidence before us, we find Wichita SMSA Tower Holdings, LLC willfully<sup>4</sup> violated Section 17.51(b) of the Rules by failing to exhibit required tower lights on its antenna structure 1032091.

6. Pursuant to Section 1.80(b)(4) of the Rules,<sup>5</sup> the base forfeiture amount for failure to exhibit obstruction lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>8</sup> Wichita SMSA Tower Holdings, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51(b) of the Rules by failing to exhibit obstruction lighting on structure 1032091 in Wichita, Kansas.

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<sup>2</sup> See 47 C.F.R. § 17.6(a).

<sup>3</sup> See 47 C.F.R. § 17.48(a).

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Wichita SMSA Tower Holdings, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Wichita SMSA Tower Holdings, LLC 17330 Preston Road, Suite 100A, Dallas, TX 75252.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
District Director, Kansas City Office  
Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.